

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

ABIGAIL M. LEGROW
MASTER IN CHANCERY

NEW CASTLE COUNTY COURTHOUSE
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WILMINGTON, DE 19801-3734

April 16, 2012

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Maureen Milford, Staff Reporter
The News Journal
P.O. Box 15505
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Re: *IMO The Estate of James Vincent Tigani, Jr., deceased, et al.*
C.A. No. 7339-ML
Date Submitted: April 2, 2012
Draft Master's Report: April 5, 2012
Master's Final Report

Dear Mr. Miller, Mr. Kelleher, and Ms. Milford:

I am in receipt of Ms. Milford's letter asking the Court to unseal the redacted portions of the public version of the Verified Petition for Removal of Executrix/Trustee and for an Accounting (the "Petition") and the parties' response to Ms. Milford's request. This is the Court's final report on the request to unseal the redactions.

As an initial matter, Ms. Milford's request would have been more properly styled as a formal motion to unseal the record, and future applications of this nature should be made in that manner, so that the parties receive notice and are given an opportunity to respond. Because the issue raised by Ms. Milford's application is not particularly complex, however, and because it

appears this Court has permitted informal applications of this nature in the past,¹ I will consider the merits of the application without requiring a formal motion. To the extent Ms. Milford disagrees with this decision and intends to press her application, or to the extent the petitioner or respondent intend to take exception to the draft report, the parties should do so in accordance with Court of Chancery Rule 144.

I have reviewed the allegations that were redacted from the Petition, as well as the parties' responses to Ms. Milford's application to unseal the redacted version of the Petition. Although the petitioner asserts that the public has only a "qualified" right to access court records, to the extent such access would be for "some useful purpose and not mere curiosity," that is directly contrary to decisions issued by this Court and the Delaware Supreme Court, which instruct that "[i]n the Court of Chancery, documents filed in a court proceeding are public records unless a party seeking confidentiality demonstrates 'good cause.'"² The burden rests with the person seeking confidential treatment of a document to demonstrate such good cause.³ In determining whether that burden has been met, the Court "must balance the general principle that items filed in [the Court of Chancery] become a part of the public record with the need to maintain the sensitive information of parties' [sic] to litigation."⁴ The Court has found good cause to seal documents containing trade secrets, nonpublic financial information, and third party confidential material.⁵ Significantly, as the Delaware Supreme Court recently affirmed, information that is only "mildly embarrassing" will not be protected from disclosure.⁶

The petitioner advances three reasons that he contends constitute good cause for the continued sealing of the redacted portions of the Petition. First, the petitioner asserts that some of the redacted allegations are confidential attorney-client communications between the petitioner and his father. Second, the petitioner contends that the remaining redacted allegations reference (1) proprietary matters concerning the decedent's business interests which could prove prejudicial to the trust if made publicly known, or (2) information that is "extremely individualized and personal to the petitioner and his family." The respondent avers that the redacted allegations are "mere asides and have no bearing on the causes of action alleged" and therefore need not be unsealed.

First, I reject the respondent's assertion that the redacted allegations are not relevant to the claims in the Petition and therefore need not be unsealed. The allegations are relevant to the petitioner's claims in this action, including the breach of fiduciary duty claim, the claim that the respondent is unable to equitably administer the trust, and the claim that the respondent is unfit to

¹ This may be the case because, in describing the process for objections to the continued sealing of any court document, Court of Chancery Rule 5(g) references objections by a "party." Arguably, it is ambiguous whether the Rule is limited to parties to the litigation, or applies to any interested party. The better reading, in my view, is that the process described by Rule 5(g) should apply to any person or entity who applies to unseal a portion of the record.

² *Hurd v. Espinoza*, 34 A.2d 1084, 1085 (Del. 2011). See also *In re Yahoo! Inc. S'holders Litig.*, 2008 WL 2268354, at * 1 (Del. Ch.).

³ *In re Yahoo! Inc. S'holders Litig.*, 2008 WL 2268354, at *1; see also Ct. Ch. R. 5(g)(6).

⁴ *Cantor Fitzgerald, Inc. v. Cantor*, 2001 WL 422633, at *2 (Del. Ch.).

⁵ *Hurd*, 34 A.2d at 1086.

⁶ *Id.*

serve as either executrix or trustee. Thus, even if Rule 5(g) contained some sort of “relevance” limitation,⁷ that limitation would not be applicable here.

Second, after reviewing the redacted allegations, I conclude that the redactions in the following paragraphs should remain under seal because they constitute communications that are either arguably privileged and/or contain sensitive business information: Paragraphs 15, 18, 19, and 22, excluding the last three sentences of paragraph 22 (beginning with “The conversation” and continuing through the end of the paragraph). In contrast, I conclude that the petitioner has not demonstrated good cause for the continued sealing of the following paragraphs: 13, 14, 16, 17, 20, 21, 23, and 24. Although the allegations contained in those paragraphs may be mildly embarrassing, or may reveal conversations that the parties would prefer to keep private, they do not contain trade secrets, nonpublic financial information, or third party confidential material.

The petitioner is therefore instructed to file a new public version of the petition, redacting only those allegations that the Court has concluded contain privileged communications or potentially sensitive business information. The public version of the Petition need not be filed unless and until this Report becomes final, as provided in Court of Chancery Rule 144.

Respectfully submitted,

/s/ Abigail M. LeGrow
Master in Chancery

⁷ The respondent cites *Khanna v. McMinn*, 2006 WL 1388744, at *40 (Del. Ch.) as standing for the proposition that only relevant allegations need be unsealed. I do not read *Khanna* so broadly, but need not reach that issue for purposes of Ms. Milford’s application, because I conclude that the allegations at issue are relevant to Petitioner’s claims.